

## Forming a contract 1

### A

#### Basic principles

The basic principles of contract law in the English system arise from established custom and rules and are fundamental to all areas of law in practice. Reference is made to these principles in **drafting and interpreting the provisions of any legal agreement**, such as a lease, a loan agreement, a sales agreement, a consultancy agreement, a hire purchase agreement, a hire contract, or a service contract, etc. The principles of contract law will determine whether and at what point a **binding agreement** has been made between the parties concerned.

**Note:** The words contract and agreement are interchangeable in the examples above. For example, a loan agreement / loan contract.

### B

#### Formation of a contract

Formation of a contract requires the presence of four essential elements:

##### ■ Offer

The contract must contain the basic **terms of the agreement** and be **capable of acceptance** without further negotiation. This does not mean that the initial communication between parties will in itself **constitute an offer**. For example, in an **auction** situation, the seller, known as the vendor, may **make an invitation to treat** – invite an offer – by setting out the **conditions of sale** (for example when payment will be made) with the exception of the price. The offer is **submitted** by the purchaser, who offers to purchase at a specified price and will usually **incorporate the terms** of the invitation to treat into his/her offer.

##### ■ Acceptance

There must be an **unqualified agreement** to proceed on the basis set out in the offer and it must be **communicated to the offeror** – the person making the offer – in order to be effective. If the **offeree** – the person receiving the offer – states that he or she **accepts the offer subject to contract**, that is, some variation of the terms, then **no contract is formed**. This would be a **qualified acceptance**, which constitutes a counter offer.

Issues may arise as to whether the acceptance has been **communicated**. Two rules determine this:

- The **reception rule** applies to **instantaneous** forms of communication, for example telephone calls. The contract is said to be formed when the **acceptance is received by the offeror**.
- The **postal acceptance rule**, where there is a delay between the communication being sent and received, for example by post. The contract is formed when the **acceptance is sent by the offeree**.

To avoid **uncertainty**, the offeror may specify the method and timing of acceptance. Agreement on **essential terms**, for example price and delivery, must be certain and not vague.

##### ■ Consideration

For a contract to be **enforceable** something of value must be given, for example a price, even if it is of **nominal value**, say £1.

##### ■ Intention

It is assumed that **contracting parties** intend to **create legal relations**, particularly in commercial circumstances. This is, however, a **rebuttal presumption** – an assumption that can be contradicted – if there is contrary evidence.